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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,714	06/12/2001	Ross Halgren	45433/DBP/C664	5525

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EXAMINER

LI, SHI K

ART UNIT	PAPER NUMBER
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2633

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/880,714

Applicant(s)

HALGREN ET AL.

Examiner

Shi K. Li

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112 rejection for claim 22.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3 and 5-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant argues that the switch architecture disclosed in Bala et al. is not one which permits multi-protocol electrical channel signals converted from a demultiplexed WDM optical signal to be switched using an electrical switching unit. The Applicant argues that the switch disclosed in Bala is not a space switch and that Bala discloses a STS (space time space) or VC switch. Furthermore, the Applicant argues that Bala specifically mentions that if multi-protocol capabilities are required, the electrical switch fabrics disclosed must be replaced by the architecture disclosed in Figure 5C. The Applicant also argues that there is no motivation to combine Marmur with Bala. The Examiner addresses these arguments as follows.

Bala et al. teaches in col. 4, lines 43-51 that OXC 10 may receive input signals from and/or transmit output signals to one or more of an IP router, an ATM switch, a synchronous optical network (SONET) add-drop multiplexer or other SONET equipment, equipment from another or the same node, local equipment or other equipment. That is, Bala et al. indicates that OXC 10 is capable of switching channel signals having different data-protocols such as IP, ATM and SONET.

Whether the switch of Bala et al. is a space switch or a STS switch is not importance or not relevant because the claims do not recite "space switch" or "STS switch".

Bala teaches in col. 12, lines 11-17 that a optical middle stage matrix 120 permits the electronic first and last stage matrices 110, 130 to be bypassed if necessary so that the TRs can connect directly to the optical middle stage matrix 120. This permits the format and/or bit rate of signals applied to middle stage 120 to be independent. Nowhere does Bala mentions that "if multi-protocol capabilities are required, the electrical switch fabrics disclosed must be replaced by the architecture disclosed in Figure 5C".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Marmur teaches a 3R regeneration unit (see col. 1, line 54). Marmur teaches in FIG. 2 and col. 3, line 58-col. 4, line 34 to use a clock rate indication signal to control the CDR for handling different communication protocols. One of ordinary skill in the art would have been motivated to combine the teaching of Marmur with the optical node of Bala et al. because a 3R regeneration corrects timing in addition to power level and shape, and, therefore, provides high quality signal at the output interface unit. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to use 3R regeneration, as taught by Marmur, in the optical node of Bala et al. because a 3R regeneration corrects timing in addition to power level and shape, and, therefore, provides high quality signal at the output interface unit..


M. R. SEDIGHIAN
PRIMARY EXAMINER